THE HONOURABLE SRI JUSTICE J. CHELAMESWAR

AND

THE HONOURABLE SRI JUSTICE M. E.N. PATRUDU

W.P.No. 14064/2002, 15497/2002, 18203/2002,

18993/2002 and 20414/2002

Dated: 31.01.2006

W.P. No. 14064 of 2002

Between**:-**

1. Regional Joint Director of School Educationh, Hyderabad,
2. District Educational Officer, Ranga Reddy Districtt
3. C.E.O. Ranga Reddy District
4. Commissioner and Director of School Education, A.P. Hyderabad
5. Govt. of Andhra Pradesh represented by its Secretary, Education Department, A.P. Hyderabad.

….Petitioners

And

Smt. B. Suvarna, SA, ZPHS, Nagole, R.R. Dist.

…Respondent

W.P.No. 15497 of 2002

Between::-

Regional Joint Director of School Education, Hyderabad and others

…Petitioners

And

Smt. B.Suvarna,SA ZPHS, Nagole, R.R.Dist.

..Respondent

W.P.No.18203 of 2002

Between:

Govt. of A.P. rep,. By its Secretary, Education Department

And others.

…Petitioners

And

K.M. Manohar Reddy son of K. Narasa Reddy,

Aged about 56 years, at present working as Head Master

Z.P. High School,Chitvel, Chitvel mandals, Cuddapah Dist.

…Respondent

W.P.No. 18993 of 2002

Between:-

The Government of A.P. represented by its Prl.

Secretary to Govt. School Education Department,

Secretariat, Hyderabad and others.

…Petitioners

And

B.Sai Reddy s/o Narayana Reddy, aged about 50 years,

Occ: School Assistant, Z.P.H.School (Boys) Ghatkesar,

R.R.District.

…Respondent.

W.P.No.20414 of 2002

Between:-

The Government of A.P. represented by its Prl.Secretary to Govt.

School Education Department, Secretariat, Hyderabad.

And others.

…Petitioners

And

J.Krishnaiah, School Assistant ((Maths)

Z.P.H.S.(B) Vikarabad, R.R.District.

..Respondent

THE HONOURABLE SRI JUSTICE J. CHELAMESWAR

AND

THE HONOURABLE SRI JUSTICE M. E.N. PATRUDU

W.P.No. 14064/2002, 15497/2002, 18203/2002, 18993/2002 and 20414/2002

COMMON ORDER (Per Hon'ble Sri Justice J. Chelameswar)

These five writ petitions raise a common issue. The petitioners in all these five writ petitions are the various authorities of the State of Andhra Pradesh in the Department of Education.

The respondents in all these writ petitions were initially appointed as School Assistants by the State of Andhra Pradesh and their services were governed by the Andhra Pradesh Education Subordinate Services Rules. The initial appointments were made some prior to 1974 and some subsequent to 1974. The relevance of 1974 being that an amendment to the Constitution of India by way of Article 371D with effect from 01.07.1974 was incorporated in the Constitution, which amendment

in substance permitted the State of Andhra Pradesh to be divided into various geographical units for the purpose of employment under the State. The extent of the unit depends upon the nature of the employment and its rank. Such units are made mutually exclusive for certain purposes relevant for the terms of the employment. The said Amendment authorized the President of India to make appropriate orders providing for the creation of such distinctions based on territorial considerations.

The whole scheme of Article 371-D of the Constitution and the Presidential Orders issued thereunder is necessarily an exception to the general scheme of Articles 14 and 16 of the Constitution of India which prohibit considerations of domicile in the matter of public employment.

Pursuant to the above mentioned amendment, the President of India issued an order called the Andhra Pradesh Public Employment (Organization of Local Cadres and Regulation of Direct Recruitment) Order, 1975. Para-3 of the said order mandates that the Station Government shall, within a period of eighteen months from the commencement of the Presidential Order organize classes of posts in the civil services etc. in to different local cadres for different parts of the State. Sub-para (2) mandates that the posts belonging to the category of Junior Assistants and equivalent to or lower than that of a Junior Assistant in each department in each district shall be organized into separate cadres district-wise. Sub-para (3) mandates that all non-gazetted posts in each department other than the posts referred to in sub-paragraph (2) shall be organized into a separate cadre zone-wise. The further details of this organization may not be necessary for the purpose of the present case. Though the expression ‘district’ is not defined in the presidential order, the expression ‘zone’ is defined in II Schedule of the Presidential order. It is admitted on all hands that the expression ‘district’ only means a revenue district in the State.

Pursuant to the mandate under paragraph-3 of the Presidential Order referred to earlier the Government of Andhra Pradesh issued G.O.Ms.No. 529, Education Department, dated 14.05.1976 by which the employees of the State in the Education Department have been organized into various local cadres. The relevant portion of the order is at para-2 which reads as follows:-

(2) “The Schemes have been carefully considered by Government and finalized in consultation with the Allotment Committees constituted in G.O.Ms.No. 784 G.A. SPF-A) dated 15.11.1975. The schemes for organization of Local cadres in the Department of School Education, as approved by Government are given in the Annexure

to this order. Annexure-I relates to organization of Local Cadres in respect of specified Gazetted categories and Annexure-II relates to State-vide non-Gazetted categories. Action to organize local cadres will now be taken up by allotment of personnel to the various Local Cadres in accordance with the annexed schemes. In Annexure-III to this order details of Non-Gazetted posts equivalent to the cadre of L.D.C. and below, the present unit of appointment of which is District and which will have to be continued as District cadres under para 3(7) of the Andhra Pradesh Public Employment (Organization of Local Cadres and Regulation of Direct Recruitment) Order, 1975 read with para-7 of G.O (P) 728 G.A. (SPF-A) dt. 1.11.1975 are given."

It is brought to our notice that the posts of School Assistants are included in Annexure-III to the said G.O. and as per para-2 extracted above, Annexure-III deals with the non-gazetted posts equivalent to the cadre of L.D.C. and below i.e. cadres referred to sub-paragraph (2) of para-3 of the Presidential Order for which the unit of appointment is specified to be the District.

Each of the respondents in these writ petitions were initially appointed in one of the Districts of Andhra Pradesh as School Assistants under the A.P. Education and Subordinate Services Rules falling within the scope of Annexure-III of the said order, in some district of the State or the other. Subsequently each one of them was transferred from the district in which he or she was appointed to another district on their own requests. Such transfers are permissible under para-5 in various contingencies stipulated in the said para. The relevant stipulation for the purpose of these writ petitions is contained in sub-para 2 (d) which reads as follows:-

" the transfer of a person from one local cadre to another local cadre on a reciprocal basis, subject to the condition that the person so transferred shall be assigned seniority in the latter cadre with reference to the date of his transfer to that cadre."

It can be seen from the above clause that transfers on reciprocal basis from one local cadre to another local cadre (i.e. one district or another district in the context of the present case) is permissible. However, subject to the condition that a person seeking such a transfer agrees to take last place to the seniority list in the district to which he seeks transfer to.

After taking the orders of transfer and working at the new place of transfer, each of the respondents now claim that their past services also should be counted for

deciding their eligibility to the promotion of next higher post i.e. Head Master's post. The Andhra Pradesh Administrative Tribunal by various orders under challenge in these writ petitions accepted the claim of the respondents and allowed the O.A. and hence the present writ petitions.

The Tribunal came to such a conclusion on an mistaken impression that the posts of School Assistants were part of a cadre of whose local area is the zone prior to the issuance of G.O.Ms. No. 104, dated 18.12.1999. In fact, the Tribunal recorded so in the following words.

> "Considering, therefore, the facts and circumstances of the case and after hearing both sides and on perusing the material on record, the respondents are directed to reckon the services of the applicant from the date of origin of his service in Chittoor District in addition to the services put in by him in Cuddapah District after duly appreciation of the contentions submitted by the applicant's counsel. In the light of this direction, the respondents are further directed to consider the case of the applicant for promotion in the ensuing counseling and pass appropriate orders thereon. O.A. is disposed of accordingly."

The statement which has no basis in law. Apparently the existence of G.O.Ms.No. 529, Education, dated 14.5.1976 was either not brought to the notice of the Tribunal or ignored by the Tribunal while coming to such a conclusion. The relevant portion of G.O.Ms.No. 529 is already extracted earlier in the order. On this ground alone, in our view, the writ petitions are required to be allowed.

The learned counsel for the respondents Sri Raja Ram, however, argued that the post of Head Master being admittedly a zonal post, the entire service of each of the School Assistants irrespective of the fact whether they took advantage of a transfer from one district to another district on their own request should be taken into consideration.

We regret our inability to accept the submissions made by the learned counsel for the reason that accepting such a submission would simply neutralize the letter and spirit of the Article 371-D of the Constitution and the Presidential Order made thereunder. It must be remembered that an amendment to the Constitution departing of general scheme of Articles 14 and 16 was made in the background of certain historic factors which are peculiar to the State of Andhra Pradesh and that there are still relentless assertions of inequality of opportunity in the matter of public

employment. To give a quietus to such competing assertions from the various parts of the State the Parliament in its capacity of the constituent assembly thought it fit to amend the Constitution departing from the general principle of equality before law thereby excluding from consideration factors such as religion, race, sex and residence. By the amended Article 317D of the Constitution, it is provided that insofar as the employment opportunities at various levels in the State of Andhra Pradesh are concerned, separate units depending upon the nature of employment are required to be recognized providing an advantage based on the residence in those units. The provision under para-5 enabling the transfers on various considerations enumerated therein is once again an exception to the above principle. But the presidential order itself mandates that any person claiming the benefit of exception by seeking a transfer from local cadre to another local cadre should necessarily forego his seniority and take last rank in the local cadre to which he is seeking transfer to.

We are, therefore, of the opinion that the orders under challenge cannot be sustained and, therefore, they required to be set aside. All the writ petitions are, therefore, allowed setting aside the orders challenged in each of the writ petition.

However, it is brought to our notice that during the pendency of the litigation either in this Court or in the Andhra Pradesh Administrative Tribunal in some of the cases the respondents have in fact been promoted as Head Masters taking into consideration the service rendered by each one of them prior to the transfer also. It is also brought to our notice that in one or two cases the respondents had even retired from service after serving as Head Masters. In the circumstances though the writ petitions are allowed, we are of the opinion that the amounts already paid to those respondents who were in fact promoted shall not be recovered if the respondents come to the conclusion that their promotion was not in accordance with law. But however it is open for the petitioners to revert such of those who were promoted pursuant to either interim direction of this Court or the Tribunal or otherwise after following the appropriate procedural law.

J. CHELAMESWAR, J

M.E.N. PATRUDU, J

Date: 31.01.2006

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